

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 7667 of 2006
With
SPECIAL CIVIL APPLICATION No. 7669 of 2006
To
SPECIAL CIVIL APPLICATION No. 7670 of 2006
With
SPECIAL CIVIL APPLICATION No. 7672 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO - Petitioner(s)
Versus
HEIRS OF DECEASED JUMMABHAI ALLUBHAI KUMBHAR & 9 -
Respondent(s)

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Appearance : [SCA NO. 7667/2006]

MS AVANI S MEHTA for Petitioner(s) : 1,
 NOTICE NOT RECD BACK for Respondent(s) : 1,
 NOTICE SERVED for Respondent(s) : 1 - 10.
 - for Respondent(s) : 0.0.0

Appearance : [SCA NO. 7669/2006]

MS AVANI S MEHTA for Petitioner(s) : 1,
 MR HARSHIT TOLIA for Respondent : 1
 MS KENNY BHATT for Respondent : 1
 NOTICE SERVED for Respondent(s) : 2-3.
 MR SUNIL PARIKH for Respondent : 4

Appearance : [SCA NO. 7670/2006]

MS AVANI S MEHTA for Petitioner(s) : 1,
MR HARSHIT TOLIA for Respondent : 1
MS KENNY BHATT for Respondent : 1
NOTICE SERVED for Respondent(s) : 1,2-4.
MR SUNIL PARIKH for Respondent : 5

Appearance : [SCA NO. 7672/2006]

MS AVANI S MEHTA for Petitioner(s) : 1,
MR HARSHIT TOLIA for Respondent : 1
MS KENNY BHATT for Respondent : 1
NOTICE SERVED for Respondent(s) : 2-3.
MR SUNIL PARIKH for Respondent : 4

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/07/2007

ORAL COMMON JUDGMENT

1. **RULE.** Learned advocate Mr. Tolia waives service of rule on behalf of respondent no. 1 and learned advocate Mr. Sunil Parikh waives service of rule on behalf of New India Insurance Company, in all the matters. At the request of the learned advocates for the respective parties, the matters are taken up for final hearing today itself. Since these petitions are filed against the common order passed below Exh. 14, in MACP No. 142/2005 and its allied matters, they are heard together and they are now being disposed of by this common judgment. The impugned order is dated 8th December, 2005.

1.1. The petitioner United India Insurance Company has challenged this order on the ground that even when

the proceedings are still not over, and the issues with regard to negligence etc., are required to be adjudicated upon, the Tribunal has given a finding that there is no negligence on the part of the driver of six seater rickshaw, popularly known as "Chhakdo". The record shows that in the instant case, the accident occurred on 6th April, 2005. In the said accident, three vehicles got involved , namely, traylor bearing registration no. HR-37-8189, truck bearing registration no. GR0 4353 and six seater rickshaw bearing registration no. GJ 12-W 5349. The present petitioner is the insurer of the traylor. The victims of the accident have preferred the aforesaid MACP to obtain compensation. During the pendency of the proceedings, the petitioner submitted an application at Exh. 14, praying for impleading the owner, insurer and driver of the rickshaw. However, the Tribunal has rejected the application, and held that there did not appear to be any negligence on the part of the driver of rickshaw since the accident occurred while the vehicle namely truck bearing registration no. GR0 4353 was in the process of overtaking it. The record shows that in the accident, rickshaw was burnt and three inmate of the same had lost their lives. The Tribunal has further held that there did not appear to be any negligence on the part of the rickshaw driver and, therefore, it rejected the

application.

2. I have heard Ms. Avani Mehta learned advocate for the petitioner and Mr. Tolia and Mr. Parikh learned advocates for the respondents. It is submitted by Ms. Mehta that the Tribunal has exonerated the rickshaw driver, the owner and the insurer, even when recording of the evidence has not commenced. The learned advocates for the respondents have practically not opposed this submission.

2.1. Considering the record of the petition, and in particular the impugned order, it clearly appears that it has been adequately pleaded by the petitioner in the written statement that there was contributory negligence on the part of the rickshaw owner and he was also to some extent responsible for causing the accident. When this is the position, and when the evidence is still to be lead, the Tribunal could not have come to the conclusion giving clean chit to the driver of the rickshaw. Admittedly, three vehicles namely, trailor, truck and six seater rickshaw are involved in the accident. In the written statement, some averments have been made against the driver of the rickshaw attributing the negligence to him also. In view of the same, it clearly appears that the

owner, driver and the insurer, if any, of the rickshaw are necessary party to the proceedings. The impugned order of the Tribunal is obviously therefore, erroneous and it is required to be quashed and set aside and it is hereby quashed and set aside. Keeping in view the aforesaid observations the Tribunal will take appropriate decision on application at Exh. 14 afresh within three weeks from the date of receipt of this judgment.

3. The petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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